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VIA E-MAIL: regs.comments@federalreserve.gov

March 9, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington DC 20551

Re: Comments to Proposed Amendments to Regulation CC
Docket No.: R-1176

Dear Ms. Johnson:

Empire Corporate Federal Credit Union (Empire) is pleased to provide comments to the Federal Reserve Board's proposed regulation (the "Proposal") to amend Regulation CC to implement the Check Clearing for the 21st Century Act (the "Check 21 Act").

Empire is a wholesale corporate credit union that provides liquidity, item processing, investment and other financial services to over 1,000 member credit unions. Empire has been an active supporter of the Check 21 Act since its inception and commends the Board for its timely issuance of regulations that implement this progressive legislation.

Credit Union National Association's Comment letter

Empire fully supports and echoes the comments submitted by the Credit Union National Association (CUNA) in its letter to the Board. Empire believes that CUNA's letter succinctly and accurately captures the most significant issues under the Proposal.

Additional Comment

In addition to the comments provided in CUNA's letter, Empire submits the following additional comment for the Board's consideration.

Definition of “Reconverting Bank,” Section 229.22(yy)

Section 229.2 (yy) of the proposal defines “Reconverting Bank” to be:

- (1) The bank that creates a substitute check or
- (2) With respect to a substitute check created by a person that is not a bank, the first bank that receives the substitute check and that transfers, presents, or returns the substitute check or, in lieu of that substitute check, the first paper or electronic representation of that substitute check.

In “3.” of the proposed commentary to this section, The Board notes:

A bank also is a reconverting bank if it is the first bank that receives a substitute check created by a nonbank and transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of such substitute check. Under § 229.51, a substitute check is the legal equivalent of the original check only if a bank has made the substitute check warranties listed in § 229.52. **A bank therefore is not required to accept a substitute check that was created by a person other than a bank and has not yet been transferred by a bank, although a bank may agree to do so** (*emphasis added*).

Empire seeks clarification from the Board on two issues regarding this section. First, can a bank become a reconverting bank without the bank’s knowledge and assent? And second, can the “substitute check” created by a nonbank and transferred to a bank actually be a “substitute check” if the bank has not granted permission to the nonbank to utilize the bank’s routing and transit number?

Empire’s questions are evidenced in the following example:

Company A, which is not a bank, by agreement, receives incoming paper checks for processing in the forward chain on behalf of Bank A. Bank A did not image the items and forward an electronic file to Company A, but instead presented normal paper items. Company A believes it is in its company’s best interest to convert these paper checks into substitute checks. Company A then provides the substitute checks to Bank B for payment.

Under the proposal, Company A, as a non-bank, is clearly not eligible to be the reconverting bank. In this example who would hold that status – Bank A that deposited the paper items with Company A or Bank B that is first to receive the substitute checks created by Company A?

If it is the latter, how will Bank B ever be able to refuse to agree to accept a substitute check from Company A as suggested by Comment “3.” cited above? Moreover, how can the “substitute checks” forwarded by Company A to Bank B ever truly meet the generally accepted industry standards for a substitute check if such standards mandate identification of the reconverting bank’s routing and transit number? Company A would not have authority to utilize this number unless agreed to by Bank B.

This is a significant issue since it is possible that Empire may be placed in the position of becoming a reconverting bank without its knowledge and without its assent. Empire firmly believes that a bank should not become a reconverting bank, through a non-bank company, unless the bank has an agreement with the company. Thus, in the example

above, if Bank B and Company A have an agreement, then Bank B would become the reconverting bank. If there were no agreement, then Bank B would not be the reconverting bank. Again, Empire respectfully requests that the Board clarify this issue.

Empire appreciates the opportunity to comment on this important rulemaking. If you have any questions regarding Empire's comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Christiane G. Hyland". The signature is written in a cursive style with a horizontal line underneath the name.

Christiane G. Hyland
SVP, General Counsel

cc: Mike Canning, Executive Director, ACCU
Mike Carter, Regulatory Advocacy Coordinator, NYSCUL
Kimberly Dewey, Associate Director, Regulatory Affairs, NAFCU